

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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PHILLIP COULTER, et al.,

Case No. 2:19-CV-1619 JCM (EJY)

**Plaintiff(s),**

## ORDER

V.

MONA VAN KRIEKAN, et al.,

Defendant(s).

Presently before the court is pro se plaintiffs Phillip Coulter and Shari Williams's (collectively "plaintiffs") motion to dismiss their own complaint. (ECF No. 25). Defendants Mona Van Krieken, Mike and Mo's Transport, Inc and Admiral Merchants Motor Freight, Inc., (collectively "defendants") filed a response (ECF No. 26), to which plaintiffs did not reply.

17       Also before the court is plaintiffs' second motion to dismiss their own complaint. (ECF  
18 No. 31). Defendants filed a response (ECF No. 33), to which plaintiffs did not reply.

19        “[T]he standard practice of federal courts is to interpret filings by pro se litigants liberally  
20 and to afford greater latitude as a matter of judicial discretion.” *Ricotta v. California*, 4 F. Supp.  
21 2d 961, 986 (S.D. Cal. 1998). Thus, the court is generally lenient when a pro se plaintiff is  
22 involved. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (“A document filed *pro se* is to be  
23 liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less  
24 stringent standards than formal pleadings drafted by lawyers.” (internal quotation marks and  
25 citation omitted)). On the other hand, this court “lacks the power to act as a party’s lawyer, even  
26 for pro se litigants.” *Bias v. Moynihan*, 508 F.3d 1212, 1219 (9th Cir. 2007).

Fed. R. Civ. P. 41(a) provides as follows:

(1) By the Plaintiff.

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2       (A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2,  
3 and 66 and any applicable federal statute, the plaintiff may dismiss  
an action without a court order by filing:

4               (i) a notice of dismissal before the opposing party serves  
either an answer or a motion for summary judgment; or

5               (ii) a stipulation of dismissal signed by all parties who have  
appeared.

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7       (B) Effect. Unless the notice or stipulation states otherwise, the  
dismissal is without prejudice. But if the plaintiff previously  
dismissed any federal- or state-court action based on or including  
the same claim, a notice of dismissal operates as an adjudication on  
the merits.

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10     (2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an  
action may be dismissed at the plaintiff's request only by court  
order, on terms that the court considers proper. If a defendant has  
pleaded a counterclaim before being served with the plaintiff's  
motion to dismiss, the action may be dismissed over the  
defendant's objection only if the counterclaim can remain pending  
for independent adjudication. Unless the order states otherwise, a  
dismissal under this paragraph (2) is without prejudice.

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15     As defendants note, the time to file a notice of voluntary dismissal under Rule 41(a)(1)  
has passed because defendants have answered the complaint. (ECF Nos. 26; 33). Defendants  
16 contend that plaintiffs provide no authority to support a dismissal without prejudice. *Id.*  
17 However, the court construes plaintiffs' request as one for a dismissal without prejudice by court  
18 order under Rule 41(a)(2). Plaintiffs represent that they wish to dismiss this action because they  
19 do not have an attorney, despite attending "more than 20 consultations." (ECF No. 25).

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21     Dismissing this action because plaintiffs do not want to proceed pro se is certainly not an  
adjudication on the merits. As a result, the court will grant plaintiffs' motion to dismiss (ECF  
22 No. 25) and dismisses plaintiff's claims without prejudice. The court denies plaintiffs' second  
23 motion to dismiss (ECF No. 31) as moot. The court notes that, having dismissed the third-party  
24 action by stipulation (ECF Nos. 30; 32), that no claims remain pending in this case.

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26     Accordingly,

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28     IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiffs' motion to  
dismiss (ECF No. 25) be, and the same hereby is, GRANTED.

1 IT IS FURTHER ORDERED that plaintiffs' second motion to dismiss (ECF No. 31) be,  
2 and the same hereby is, DENIED as moot.

3 IT IS FURTHER ORDERED that plaintiffs' complaint be, and the same hereby is,  
4 DISMISSED without prejudice.

5 The clerk is instructed to enter judgment and close the case accordingly.

6 DATED May 22, 2020.

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8 UNITED STATES DISTRICT JUDGE

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